

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRAVIS SEAN BOYD,

Defendant.

**No. 13-cv-1119 MV/SMV
CR 00-cr-0941 MV
[CR 00-cr-0123 JP]**

ORDER FOR CLARIFICATION BY DEFENDANT BOYD

This proceeding under 28 U.S.C. § 2255 is before the Court on Defendant's Notice of Withdrawal [CV Doc. 10], filed on August 11, 2014. The notice is not entirely clear and makes conflicting requests for relief. Defendant does not name the document that he seeks to withdraw, and the notice refers to both "Doc. 2," which is Defendant's memorandum brief, as well as the § 2255 motion that initiated this civil proceeding. The notice also asks the Court to "[t]erminate (all) action(s) regarding the aforementioned cause." This request may constitute a notice of dismissal of Defendant's § 2255 motion. *See Fed. R. Civ. P. 41(a)(1)(A)(i); see also Janssen v. Harris*, 321 F.3d 998, 1000 (10th Cir. 2003) (affirming construction of "pro se letter . . . requesting that the case be dismissed without prejudice" as notice under former rule 41(a)(1)(i)).

At this stage of the litigation, Defendant may dismiss his § 2255 motion without leave of the Court. *See Fed. R. Civ. P. 41(a)(1)(A)(i).* "The [filing of a notice under rule 41(a)(1)(A)(i)] itself closes the file. . . . Once the notice of dismissal has been filed, the district court loses jurisdiction . . . and may not address the merits." *Duke Energy Trading & Mktg., L.L.C. v. Davis*,

267 F.3d 1042, 1049 (9th Cir. 2001), *quoted in Janssen*, 321 F.3d at 1000. To allow proper adjudication—or dismissal—of this § 2255 motion, Defendant will be directed to clarify the relief that he seeks in his notice of withdrawal [CV Doc. 10]. If Defendant fails to adequately clarify his intention, the Court will construe the Notice as a voluntary dismissal of the entire § 2255 motion.

IT IS THEREFORE ORDERED that, **within 14 days** from entry of this Order, Defendant shall file a response notifying the Court whether his Notice of Withdrawal was intended only to withdraw his memorandum brief or, instead, was meant to dismiss his § 2255 motion.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge